IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

FAO No. 101 of 2005

Date of Decision : March 9, 2009

Padam Ram & Anr. …Appellants.

Versus:

Sagar Dass & Anr. …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellants : Mr. Dibender Ghosh, Advocate.

For the respondents: Mr. Jagdish Thakur, Advocate.

Sanjay Karol, J. (Oral)

In the present appeal, the appellants have assailed the impugned award dated 7.12.2004 passed by the Motor Accident Claims Tribunal, Kinnaur Division at Rampur Bushahr, H.P. in M.A.C. Case No. 71 of 2003. The challenge is on the ground that the compensation of Rs.1,10,000/- awarded due to loss of their son is much on the lower side.

The controversy in the present case is restricted only to the enhancement of the compensation and facts necessary for adjudication are as under.

That on 8.8.2003, the petitioners' son Shri Tikkam Ram met with a motor accident at a place called Rampur, Distt.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Shimla. He was travelling in vehicle No. HP-06-5011 which met with an accident in which he sustained injuries and succumbed to the same. The vehicle was insured with the National Insurance Co. Ltd.

The claimants being the parents of the deceased filed a petition under Section 166 of the Motor Vehicles Act 1988 (hereinafter referred to as 'the Act'), claiming compensation of a sum of Rs.10 lacs.

On the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether deceased died due to rash and negligent driving of vehicle having registration No.HP-06-5011, as alleged? ……..OPP

2. If issue No.1 is proved in affirmative, to what amount of compensation the petitioners are entitled to and against whom? …….OPP

3. Whether the accident took place due to mechanical defect, as alleged? ……..OPR

4. Whether the vehicle was duly insured with the Insurance Company at the time of accident? ….....OPR-1

5. Whether the present petition is not maintainable? ….....OPR-2

6. Whether the owner of the vehicle in question violated the mandatory terms and conditions of the insurance policy? …….OPR-2

7. Whether the driver of the vehicle in question was not possessing a valid and registration-cum-fitness certificate at the time of accident? ….....OPR-2

8. Whether the driver of the vehicle in question was not possessing a valid and effective driving licence at the time of the accident? ….....OPR-2"

Opportunity to adduce evidence was afforded to the parties.

Appreciating the material on record including oral and documentary evidence, the Tribunal concluded that the driver of the vehicle had been negligent, which resulted into occurrence of the accident due to which the deceased sustained injuries and died. The vehicle being fully insured and the driver having possessed a valid and effective driving licence, the insurer was held liable to have indemnified the insured. A sum of Rs.1,10,000/- along with interest @ 9% per annum was directed to be paid from the date of the award, if the amount was not deposited within a period of two months.

The occurrence of the accident, death of the deceased and negligence of the driver is not in dispute.

In the claim petition, it is clearly mentioned that the deceased was a regular student of 10+2 class at Govt. Sr. Secondary School, Rampur. He was intelligent and having keen interest in studies. Shri Padam Ram (PW-1) has sought to prove the same but, however, from his statement, it is apparent that the deceased undoubtedly was a student of 12th standard but did not have a brilliant academic record. It has come on record that he had cleared his 10th class in 3rd division and nothing is proved on record to even suggest that he was brilliant in his studies in 11th standard or had progressed well in the 12th standard.

However, the fact of the matter is that the deceased was 19 years of age as on the date of the accident, which is also

evident from the matriculation examination certificate Ext.PW-1/D as also the Parivar register Ext.PW-1/C.

The compensation to be awarded has to be just and reasonable. The Tribunal has taken into account the factum of anticipated and expected income, the amount which the deceased would have spent on himself and his family, had he not been met with an accident and also dependency of the parents while determining the compensation of Rs.1,10,000/-.

From the impugned award, it is evident that the Tribunal has awarded no compensation towards love and affection and conventional and funeral charges. Taking into account the overall attending circumstances, a total sum of Rs.60,000/- over and above a sum of Rs.1,10,000/- already awarded by the Tribunal would be just and reasonable. This would cover all heads including loss of love and affection, conventional charges and funeral charges. Ordered accordingly.

I see no reason as to why the petitioner be not awarded interest @ 9% from the date of filing of the petition upto the date of realization. Ordered accordingly.

In the aforesaid circumstances, the impugned award is modified to the aforesaid extent. The appeal is disposed of.

(Sanjay Karol),
Judge.

March 9, 2009.
(*rana*)